IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1399 OF 2004

Jagdish Shridhar Shetty ... Applicant

versus

The Deputy Commissioner of Police, Zone-7, Bombay and others ... Respondents

...

Mr. V.V. Purwant, for the Applicant.

Mr. S.R. Shinde, A.P.P., for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

7th October 2004

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Shinde, A.P.P., waives service for the Respondents. As short question is involved, this application is taken up for final disposal forthwith by consent.

. Briefly stated, the externment

proceedings were initiated against the Petitioner by issuance of show cause notice dated 6th May 2003. In response to the said show cause notice, the Petitioner filed his explanation. After considering the explanation, the authority proceeded to pass order on December 31, 2003. Interestingly, although the authority records that it is satisfied that action as proposed should be taken against the Petitioner, but instead of passing order of externment, thought it appropriate to impose certain conditions on the Petitioner for good conduct and failure to comply with those conditions would result in passing order under section 56(1)(a) (b) of the Bombay Police Act. The grievance of the Petitioner is that such a course was not permissible as section 56 does not empower the authority to pass conditional order. It is not necessary for us to examine this contention for the nature of order that I propose to pass.

. What is relevant for our purpose, however, is that after the order of December 31, 2003, the authority has passed another order on 25th May 2004 on the basis that the Petitioner failed to comply with the conditions imposed in

the earlier order dated December 31, 2003. As mentioned earlier, assuming that it was open to the authority to pass such conditional order, in the present case, admittedly, no notice was given to the Petitioner calling upon him to show cause why externment order under section 56(1)(a) (b) should not be passed against him for having failed to comply with the conditions stated in the order dated December 31, 2003. If at all the authority intended to take such action on the basis of materials, which have come to its notice after passing the order dated December 31, 2003, that could be done only after the Petitioner was afforded opportunity of being heard in that behalf. Not adhering to that requirement would obviously result in infraction of principles of natural justice. Besides, the grievance of the Petitioner is that the order, which is now passed on 20th May 2004 under section 56(1)(a)(b) is with reference to certain events, which had occurred even anterior to passing of the previous order dated Deember 31, 2003 and that could not be made basis for the present order. In any case, since I am inclined to set aside the order dated 20th May 2004 being in breach of the principles of natural justice, without examining

any other contention, the parties are relegated to the position prior to the passing of the said order. In other words, if at all the authority is inclihned to issue order directing removal of the Petitioner in terms of section 56(1)(a)(b), then such order can be passed only after giving proper opportunity to the Petitioner to offer his explanation with regard to the new materials that has come to the notice of the authority concerned. If such action is initiated, that will be decided on its own merits in accordance with law, uninfluenced by any of the observations made in the impugned order, or, for that matter, the present order.

. Accordingly, this petition succeeds. The impugned order dated 20th May 2004 is set aside with liberty to the authority to take action against the Petitioner as may be permissible by law. Ordered accordingly.

(A.M.KHANWILKAR,J.)